

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

ALISSA Mc CLUSKEY, *et al.*,

Defendants.

Case No. C08-5151RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U. S. Magistrate Judge J. Kelley Arnold. Dkt. 4. The Court has considered the Report and Recommendation, objections to the Report and Recommendation, if any, and the record.

Plaintiff filed this 42 U.S.C. 1983/Bivens action on March 12, 2008. Dkt. 1. Plaintiff is incarcerated at the Northwest Detention Center ("NDC") and is going through the process of being deported. *Id.*

Judge Arnold filed the instant Report and Recommendation on April 2, 2008, recommending that Plaintiff's application to proceed *in forma pauperis* be denied. Dkt. 4. The Report and Recommendation points out that this case was filed two weeks after a Report and Recommendation, which sought to have Plaintiff declared a vexatious litigant, was filed in Western District of Washington case number 07-5679FDB. *Id.* The Report and Recommendation was adopted, and Plaintiff now litigates under strict sanctions. *Id.*

1 Plaintiff argues in his objections that the Report and Recommendation had not yet been adopted, so
2 the recommendations it contained, including limiting his ability to proceed *in forma pauperis*, should not
3 apply here. Dkt. 5.


4 Plaintiff's objections are without merit. As is explained in the instant Report and Recommendation
5 and orders declaring Plaintiff a vexatious litigant, Plaintiff has an exceedingly long history of abusing the
6 judicial process. Plaintiff had notice that the Report and Recommendation declaring him a vexatious
7 litigant was pending when he filed this case, and sought to avoid the consequences by filing no less than
8 four additional cases, this being one of those. The Report and Recommendation should be adopted and
9 Plaintiff's application to proceed *in forma pauperis* should be denied.

10 As a part of the sanctions against Mr. Marks assessed for being a vexatious litigant, all documents
11 that he files are filed under seal. There is no basis upon which Plaintiff's Opposition to the Magistrate's
12 Findings and Recommendations (Dkt. 5) should remain under seal.

13 Accordingly, it is hereby **ORDERED**:

- 14 • The Report and Recommendation (Dkt. 4) is **ADOPTED**;
- 15 • Plaintiff's application to proceed *in forma pauperis* (Dkt. 1) is **DENIED**;
- 16 • Plaintiff's Opposition to the Magistrate's Finding and Recommendations (Dkt. 5) is **UNSEALED**;
- 17 The case is **RE-REFERRED** to Judge Arnold; and
- 18 • The Clerk is directed to send copies of this Order to Plaintiff, all counsel of record, and to the Hon.
19 J. Kelley Arnold.

20 DATED this 29th day of April, 2008.

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22 Robert J. Bryan
23 United States District Judge
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